



Department of Justice

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JUSTICE DEPARTMENT SETTLES LAWSUIT AGAINST COMPUTER ASSOCIATES FOR ILLEGAL PRE-MERGER COORDINATION

Department Obtains Injunction and \$638,000 in Civil Penalties

WASHINGTON, D.C. -- The Department of Justice today filed a proposed settlement with Computer Associates International Inc. and Platinum *technology* International *inc.* for violating pre-merger waiting period requirements and agreeing to restrict Platinum's ability to offer discounts to customers during the merger waiting period. As part of the settlement, Computer Associates will pay \$638,000 in civil penalties, and will be prevented from agreeing on prices, approving or rejecting proposed customer contracts, and exchanging prospective bid information with all future merger partners.

After Computer Associates and Platinum announced their proposed merger in March 1999, the parties agreed that Platinum would limit the price discounts and other terms it offered its customers during the mandatory pre-merger waiting period. The Department said that the conduct, commonly known as "gun jumping," violated the Hart-Scott-Rodino (HSR) Act of 1976, as well as Section 1 of the Sherman Act.

The agreement, filed today in the U.S. District Court for the District of Columbia, settles a civil antitrust lawsuit filed by the Department's Antitrust Division on September 28, 2001.

"Merging parties must comply with their antitrust obligations and continue to operate independently pending consummation of their transaction," said Charles A. James, Assistant

Attorney General in charge of the Department's Antitrust Division. "The Department views gun-jumping as a serious matter and will proceed against parties who fail to respect the law with regard to preconsummation conduct."

The Department said the civil penalty would deter Computer Associates and other firms from jumping the gun and exercising operational control of acquisition candidates during the HSR waiting period.

The Department said that where Computer Associates is acquiring a competitor it may conduct ordinary due diligence, which may include, under narrow and restricted circumstances, obtaining access to pending bids that are material to Computer Associate's understanding of the future earnings and prospects of the acquisition candidate. In no circumstances, however, may employees who are directly involved in the sale of a competing product obtain access to such information.

On March 29, 1999, Computer Associates announced a \$3.5 billion cash tender offer for Platinum. Prior to the merger announcement, Computer Associates and Platinum aggressively competed in numerous computer software markets. The merger agreement imposed extraordinary conduct of business restrictions on Platinum during the HSR waiting period. Platinum needed Computer Associates' approval before entering into contracts with its customers that provided for discounts of more than 20 percent off of list price or that amended standard contract terms. Computer Associates also installed one of its employees at Platinum's headquarters to review and approve customer contracts and undertake other activities related to the management of Platinum. The complaint alleged that this conduct lessened competition

between Computer Associates and Platinum in violation of Section 1 of the Sherman Act, and that Computer Associates exercised premature operational control of Platinum in violation of the HSR Act.

The HSR Act requires companies planning acquisitions or mergers that meet certain thresholds to file premerger notification documents with the Department of Justice and the Federal Trade Commission. The HSR Act also requires that the merging parties observe a mandatory 30 day waiting period (15 days in the case of a cash tender offer), after which the companies may proceed with the transaction if neither the Department nor Federal Trade Commission request additional information about the transaction. The purpose of the waiting period is to give the antitrust agencies an opportunity to investigate proposed transactions and determine whether they would violate the antitrust laws. Parties are subject to a maximum penalty of \$11,000 a day for each day they are in violation of the HSR Act.

Computer Associates, a Delaware corporation, is headquartered in Islandia, N.Y. It had fiscal year 2001 revenues in excess of \$4.1 billion. Platinum, before the acquisition, was a Delaware corporation headquartered in Oakbrook Terrace, Ill., with fiscal year 1998 revenues in excess of \$968 million. Computer Associates' acquisition of Platinum was challenged by the Justice Department in May 1999, and the case was settled when Computer Associates agreed to divest Platinum products and related assets in six mainframe systems management software markets.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, along with the Department's competitive impact statement. Any person may submit comments concerning the proposed decree during a 60-day waiting period to Renata B.

Hesse, Antitrust Division, U.S. Department of Justice, 600 E. Street, N.W., Suite 9500,
Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter
the consent decree upon finding that it serves the public interest.

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